

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT HUNTINGTON

SCOTT EDWARD SMITH,

Plaintiff,

v.

CIVIL ACTION NO. 3:04-0105

WESTERN REGIONAL JAIL MEDICAL
DEPARTMENT, SUPERVISING
NURSE BARBARA and DR. KATINY,

Defendants.

FINDINGS AND RECOMMENDATION

In this civil rights action, filed under the provisions of 42 U.S.C. §1983, plaintiff alleges that the defendants were deliberately indifferent to his medical needs. On December 6, 2004 and December 13, 2004, defendants filed motions to dismiss, with supporting memoranda. By orders entered December 8, 2004 and December 21, 2004, plaintiff was advised of his right to respond to the motions within fourteen days from the date of entry of the Court's orders, and that failure to respond would result in the entry of a judgment denying the relief sought in the complaint and dismissal of the action. Although the times provided for filing responses to the motions have passed, plaintiff has failed to respond in any manner to the motions.

RECOMMENDATION

In light of the foregoing, it is **RESPECTFULLY RECOMMENDED** that defendants' motions to dismiss be granted and that this action be dismissed with prejudice.

Plaintiff and defendants are hereby notified that a copy of these Findings and Recommendation will be submitted to the Honorable Robert C. Chambers, United States District Judge, and that, in accordance with the provisions of Rule 72(b), Fed.R.Civ.P., the parties may, within thirteen days from the date of filing of these Findings and Recommendation, serve and file written objections with the Clerk of this Court identifying the portions of the Findings and Recommendation to which objection is made and the basis for such objection. The Judge will make a de novo determination of those portions of the Findings and Recommendation to which objection is made in accordance with the provisions of 28 U.S.C. §636(b) and the parties are advised that failure to file timely objections will result in a waiver of their right to appeal from a judgment of the district court based on such Findings and Recommendation. Copies of objections shall be served on all parties with copies of the same to Judge Chambers and this Magistrate Judge.

The Clerk is directed to file these Findings and Recommendation and mail a copy of the same to plaintiff and counsel of record.

DATED: May 19, 2005



MAURICE G. TAYLOR, JR.
UNITED STATES MAGISTRATE JUDGE